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11.209.02

June 2, 2017

Via Federal Express
Airbill No. 803798261831

U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Rm. M1200
1300 Pennsylvania Ave. NW.
Washington DC 20004

Via Federal Express
Airbill No. 803798261820

Office of the Hearing Clerk
Environmental Protection Agency
1099 14th St., N.W., Suite 350
Washington, DC 20005

Via www.regulations.gov and US Mail

US EPA Office of Pesticide Programs
Public Regulatory Docket (7502P)
1200 Pennsylvania Ave. NW,
Washington, DC 20460-0001

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**Re: EPA-HQ-OPP-2007-1005;
Objection of North Coast Rivers Alliance and Request for Fee Waiver**

Hearing Clerk:

INTRODUCTION

On behalf of the North Coast Rivers Alliance ("NCRA") we submit this Objection to the Environmental Protection Agency's March 29, 2017, decision ("Decision")¹ to deny the September 12, 2007 petition by Pesticide Action Network of North America ("PANNA") and the Natural Resources Defense Council ("NRDC") to revoke all tolerances for chlorpyrifos and cancel all chlorpyrifos registrations. Our contact information, above, should be used for all correspondence regarding this Objection. NCRA objects to the denial decision in its entirety as it improperly disregards available evidence that existing tolerances and formulations are unsafe. NCRA requests that the Environmental Protection Agency ("EPA") instead grant the petition and adopt its prior proposed rule to revoke all chlorpyrifos tolerances, as published in the Federal Register on November 6, 2015 (80 Fed.Reg. 69080) ("Proposed Rule"), and further discussed on November 17, 2016 (81 Fed.Reg. 81049).

¹ As published in the Federal Register, 82 Fed.Reg. 16581 (April 5, 2017).

THE EPA'S DECISION IMPROPERLY ALLOWS AN UNSAFE USE TO CONTINUE

In the EPA's Decision it is clear that Administrator Pruitt prioritized the potential disruption to agriculture over the scientific evidence supporting the EPA's Proposed Rule revoking all tolerances for chlorpyrifos. 82 Fed.Reg. at 16590. EPA, in the face of evidence that shows that current uses of chlorpyrifos have lead to unsafe exposure levels, has chosen to continue these practices until October 1, 2022, claiming that the science remains uncertain.

The Decision turns the requirements of the Federal Food Drug and Cosmetic Act ("FFDCA"), 21 U.S.C. section 301 *et seq.*, on their head. Congress mandated that the Administrator "leave in effect a tolerance for a pesticide chemical residue in or on food *only* if the Administrator determines that the tolerance is safe." 21 U.S.C. §346a(b)(2)(A)(I) (emphasis added). The Administrator's determination of safety must be synonymous with "a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." 21 U.S.C. §346a(b)(2)(A)(ii). When "leaving in effect . . . a tolerance or exemption," EPA must also assess risk to infants and children to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue." 21 U.S.C. § 346a(b)(2)(C).

Contrary to this Congressional mandate that the Administrator must revoke tolerances that are unsafe, the Decision leaves the tolerances for chlorpyrifos in place until EPA completes its review of chlorpyrifos' registration under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 *et seq.* ("FIFRA") in 2022. 82 Fed.Reg. 16590; 7 U.S.C. § 136a(g)(1)(A)(iii)(D). The evidence before EPA does not support this decision. While the Decision incorrectly claims that FFDCA fails to provide "clear statutory directive" that would prevent EPA from delaying any tolerance revocation until 2022, the FFDCA's directives could not be clearer. EPA's own studies confirm that current tolerances and registration have unsafe aggregate exposures. EPA, Chlorpyrifos: Revised Human Health Risk Assessment (December 2014). Thus, EPA must revoke these tolerances. 21 U.S.C. §346a(b)(2).

Additionally, FIFRA likewise requires cancellation of registration, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 *et seq.* ("FIFRA") "when [a pesticide] used in accordance with widespread and commonly recognized practice . . . generally causes unreasonable adverse effects on the environment." 7 U.S.C. §136d(b). FIFRA's procedures protecting public health and safety are stringently enforced by the courts. *Natural Resources Defense Council v. U.S. Environmental Protection Agency*, ___ F.3d ___, 2017 *Daily Journal* Daily Appellate Report 4917, 4922 (9th Cir. May 31, 2017).

As recognized in the 2015 Proposed Rule, when used in compliance with current labeling requirements, chlorpyrifos applications are expected to result in exposures in drinking water that *exceed* safe levels. The Decision does not explain in detail how these particular exposures are no longer a concern. Indeed, the Decision does not specifically discuss drinking water or dietary

exposures. But the evidence showing that drinking water exposures are expected to exceed safe levels is sufficient to show that aggregate exposures will be unsafe. EPA's about-face regarding the safety of current chlorpyrifos tolerances is neither supported by the underlying evidence nor consistent with the applicable law. Because the Decision leaves in effect a tolerance exemption that exceeds safe aggregate exposure levels, EPA has violated the FFDCA.

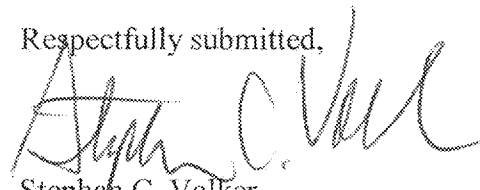
NCRA SEEKS A FEE WAIVER

Pursuant to 40 CFR sections 180.33(I), 180.33(l), and 150.17, NCRA is submitting a fee waiver request to the Office of Pesticide Programs' Document Processing Desk concurrent with this Objection. The \$4,050 filing fee would work an unreasonable hardship upon NCRA, a nonprofit unincorporated advocacy association that is vitally concerned about pesticide uses that impair public health and environmental resources. NCRA has no financial interest in the EPA's regulation of chlorpyrifos.

CONCLUSION

EPA must reverse the Decision and grant PANNA and NRDC's petition in order to protect human health and the environment. Please include this Objection in the public record regarding this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephan C. Volker", is written over the typed name.

Stephan C. Volker

Attorney for North Coast Rivers Alliance

SCV:taf